

## LICENSING SUB-COMMITTEE 13 JUNE 2022

### Licensing Application for the Grant and Review of Premises Licence:

1. Getir Unit 9 Bessemer Park Industrial Estate 250 Milkwood Road London SE24 0HG (Herne Hill)
2. Teatro 69-71 Westow Hill London SE19 1TX Gipsy Hill)

**Wards:** Herne Hill and Gipsy Hill

**Portfolio:** Deputy Leader of the Council (Jobs, Skills and Community Safety) Councillor Jacqui Dyer

**Report Authorised by:** Bayo Dosunmu: Strategic Director of Resident Services

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### EXECUTIVE SUMMARY

This report sets out details of applications for the variation of a premises licence on which representations have been submitted by interested parties.

### RECOMMENDATION

That the application set out in the Appendix to this report be considered having regard to the Council's Licensing Policy, the Licensing Objectives and the representation(s) received.

### CONSULTATION

Name of consultee	Directorate or Organisation	Date sent to consultee	Date response received from consultee	Comments appear in report (paragraph(s))
Selina Waife and Jean-Marc Moccarme	Legal and Governance	25.05.2022	26.05.2022	N/A

### REPORT HISTORY

Authorised by Executive Member	Date report drafted	Report deadline	Date report sent
	25.05.2022	01.06.2022	31.05.2022

### APPENDICES

1. Getir Unit 9 Bessemer Park Industrial Estate 250 Milkwood Road London SE24 0HG (Herne Hill)
2. Teatro 69-71 Westow Hill London SE19 1TX Gipsy Hill)

## **1. CONTEXT**

- 1.1 A licence from the Council is required for the supply of alcohol, and regulated entertainment.
- 1.2 A person (including a business) may make an application for a new Premises Licence or a variation to an existing Premises Licence. Where representations are received a Licensing Sub-Committee must consider the application. The Sub-Committee, when considering such applications, shall carry out its function under the Licensing Act 2003 with a view to the Council's Licensing Policy, Statutory Guidance and promoting the licensing objectives.

## **2. PROPOSAL AND REASONS**

- 2.1 The Licensing Sub-Committee has responsibility for exercising the Council's powers in respect of the Licensing Act 2003. Determination by the Committee of the applications appended to this report is required because representation(s) to the application(s) have been received.
- 2.2 Details of the application(s) are set out in the Appendix to this report. All statutory consultation requirements have been complied with by the applicant(s) as set out in paragraph 3 below. The results of consultation are reported in the appendices relating to each application. Public notice has been given in accordance with the requirements of the Licensing Act 2003.
- 2.3 The applicants and persons making representations have been invited to attend the meeting.
- 2.4 The fees for premises and personal licences are prescribed within the Licensing Act 2003; in the case of Premises Licences, the fees are based on the business rate of the premises.

## **3. CONSULTATION REQUIREMENTS**

- 3.1 The Licensing Act 2003 requires applicants for licences to consult and submit relevant documentation to the Responsible Authorities as follows:
  - a. Fire Authority;
  - b. Health & Safety Section;
  - c. Noise Service;
  - d. Police;
  - e. Social Services;
  - f. Home Office
  - g. Town Planning; and,
  - h. Trading Standards.
- 3.2 Applicants are also required to advertise the application by displaying public notices on or near the premises and by advertising the application in a local newspaper available in the vicinity of premises. An applicant's failure to comply with all of the above consultation requirements would invalidate the application. All applications set out in the appendix of this report have complied with the consultation requirements.

## **4. FINANCE**

- 4.1 There are no direct financial implications arising from this report.

## **5. LEGAL AND DEMOCRACY**

- 5.1 The licensing of premises for the supply of alcohol, regulated entertainment and late night refreshment fall within the provisions of the Licensing Act 2003.
- 5.2 When considering licence applications the Sub-Committee shall carry out its function with a view to the Council's Licensing Policy, Statutory Guidance and promoting the licensing objectives. The Licensing Objectives are:
- a. the prevention of crime and disorder;
  - b. Public safety;
  - c. the prevention of public nuisance; and,
  - d. the protection of children from harm.

- 5.3 The Sub-Committee must ensure that all licensing decisions have:
- a. a direct relationship to the promotion of one or more of the 4 licensing objectives;
  - b. regard to the statement of licensing policy;
  - c. regard to the Secretary of State's Guidance; and,
  - d. there must not be a 'blanket policy' to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.

Applications must be considered with regard to the principles of fair process and the Human Rights Act.

- 5.4 The purpose of Lambeth's Statement of Licensing Policy is to make clear to applicants and relevant representatives the considerations that will be taken into account when determining applications. It is also intended to guide the Licensing Committee when considering licensing applications; however the Licensing Committee must consider each application on its own merit and only allow exceptions to its own policy where the circumstances of the application justify it.
- 5.5 Subject to both the Council's Statement of Licensing Policy and Statutory Guidance having been properly considered a Sub Committee may depart from them if there are good reasons for doing so. Full reasons must be given and Sub Committees should be aware that such departures could give rise to an appeal or judicial review.
- 5.6 The Statutory Guidance, Chapter 10, states that only necessary, proportionate conditions, which promote one or more of the licensing objectives, should be attached to the licence if it is granted (paragraph 10.11). The Licensing Authority may therefore only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations (paragraph 10.11), and should avoid straying into undisputed areas (paragraph 9.24). Statutory Guidance also states that the pool of conditions that are supplied by the Secretary of State should not be applied universally irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations.
- 5.7 When considering an application for the variation of an existing licence only the variation is subject to determination. No changes can be made to a licence or the conditions attached unless they are subject to the variation application.
- 5.8 Members are advised that when considering applications to vary an existing licence the following options are available to them by virtue of the Licensing Act 2003, Part 3, Section 35, paragraphs 3 and 4.

- 5.9 Where relevant representations are made, the authority must – having regard to the representations – take such steps (if any), as it considers necessary for the promotion of the licensing objectives. The steps are:
- a. modify the conditions of the licence (conditions are deemed to be modified if any are altered, omitted or any new condition added); or,
  - b. reject the whole or part of the application
- If neither of these steps are taken, the application must be granted.
- 5.10 Members are advised that when considering applications for a new Premises Licence the following options are available to them by virtue of the Licensing Act 2003, Chapter 17, Part 3, Section 18 paragraph 4.
- 5.11 Where relevant representations are made, the authority must – having regard to the representations, take such steps (if any), as it considers necessary for the promotion of the licensing objectives. The steps are:
- a. to grant the licence subject to:
    - i. the conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
    - ii. any condition which must under section 19, 20 or 21 be included in the licence;
  - b. to exclude from the scope of the licence any of the licensable activities to which the application relates;
  - c. to refuse to specify a person in the licence as the premises supervisor; or,
  - d. to reject the application.
- 5.12 When determining an application for a review of a premises licence members may take any of the following steps they consider necessary to promote the licensing objectives:
- a. to modify the conditions of the licence;
  - b. to exclude a licensable activity from the scope of the licence;
  - c. to remove the designated premises supervisor;
  - d. to suspend the licence for a period not exceeding three months;
  - e. to revoke the licence; or,
  - f. to take no action.
- 5.13 It is considered inappropriate for officers involved in the administration of applications to make recommendations. However officers from the Responsible Authorities may request conditions be imposed on a licence and make recommendations with regard to the licensing objectives.
- 5.14 In accordance with the provisions of Part 1 of Schedule 5 of the Act, where a Licensing Authority rejects an application for a new premises licence or refuses (in whole or in part) an application to vary a premises licence the applicant may appeal the decision.
- 5.15 Where the Licensing Authority grants an application for a new premises licence the premises licence holder can appeal any decision to impose conditions on the premises licence, to exclude a licensable activity from the scope of the premises licence or to refuse to specify a named individual as the Designated Premises Supervisor.
- 5.16 Where a person who made relevant representations in relation to an application contends: that the licence should not have been granted; or that different or additional conditions should have been

imposed on the licence; or that a licensable activity should have been excluded from the scope of the premises licence; or that the licensing authority should have refused to specify a named individual as the Designated Premises Supervisor, they may appeal the decision.

5.17 Appeals are to be made to a Magistrates' Court within 21 days beginning with the date of notification of the decision. Further details are set out in the Act.